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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Review of the Pioneer's)
Preference Rules)

ET Docket 93-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF PANHANDLE TELEPHONE COOPERATIVE, INC.

Panhandle Telephone
Cooperative, Inc.

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November 15, 1993

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Comments of Panhandle Telephone Cooperative, Inc.

INTRODUCTION

Panhandle Telephone Cooperative Inc., ("Panhandle"), is a small, rural telecommunications company located in western Oklahoma. Panhandle has received an experimental license for 2 Ghz Personal Communications Services (PCS),¹ and filed a request for a pioneer's preference based on its proposal to introduce an innovative service to residents of rural Oklahoma.²

Panhandle, by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules,³ submits these comments in response to the Commission's recent Notice of Proposed Rulemaking ("NPRM") released on October 21, 1993 (FCC 93-477). Panhandle applauds the Commission's decision to act expeditiously with regard to these proposals, so as to provide the industry with clear and

¹ Station KM2XGN, File No. 3116-EX-PL-92

² Request for a Pioneer's Preference, filed May 1, 1992, PP-64. Panhandle's request was tentatively denied. See Tentative Decision and Memorandum Opinion and Order, GEN Docket No. 90-314, 7 FCC Rcd 7794, 7804 (1992).

³ 47 C.F.R. §§ 1.415 and 1.419.

concise information on which to base its actions regarding competitive bidding. However, Panhandle submits that any Commission action taken in response to this NPRM should not apply retroactively to the 2 GHz PCS proceedings.

DISCUSSION

The NPRM notes that the ability of the Commission to grant licenses through competitive bidding "may have undermined the basis for our pioneer's preference rules." NPRM, para. 7 (footnote omitted). The FCC therefore proposes to reexamine its rules, and requests comment on whether any repeal or amendment of our rules should apply to the 2 GHz PCS proceedings. NPRM, para. 19.

The pioneer's preference regulations⁴ were established to promote the development of new technologies and services and to promote advancements and improvements in existing services. These rules were adopted on the basis that the expense, length and uncertainties inherent in the radio spectrum licensing process may frustrate innovation. NPRM, para. 6. As Commissioner Barrett noted in his separate statement, the pioneer's preference rules also give small businesses and rural companies an incentive to engage in the research and development of new services and technologies.⁵

⁴ See 47 C.F.R. §§ 1.402, 1.403, 5.207.

⁵ NPRM, Statement of Commissioner Andrew Barrett, Dissenting in Part/Concurring in Part, page 2 ("Separate Statement").

As one of the goals of the pioneer's preference rules is to remove uncertainty, Panhandle submits that the Commission should take steps to maintain certainty in the PCS proceedings by limiting any repeal or amendment of the rules to proceedings in which no tentative decision has been issued. In this respect, Panhandle agrees with Commissioner Barrett's statement that subjecting preference applicants in the 2 GHz PCS docket to possible repeal of these rules is "neither reasonable or necessary."⁶

With regard to Panhandle specifically, implementation of auction authority has increased already significant uncertainty regarding the ability of small companies to become PCS service providers in their rural service areas. Although Panhandle's preference request was tentatively denied, Panhandle believes that it has satisfied the Commission's requirements in every respect. Partially in response to the incentive granted by the preference rules, Panhandle has invested significant time, money, and effort in experimenting and developing PCS service applications in rural Oklahoma.

To repeal the pioneer's preference rules at this stage of the game would be discouraging to these efforts. Moreover, the auction rules do not, as the Commission suggests, represent an opportunity for Panhandle to utilize market forces in place of regulatory mechanisms to increase its chances of obtaining a desired license.

⁶ Separate Statement, page 1.

See NPRM, para. 7. It should be obvious that innovation, until formally recognized by the Commission, will not translate cleanly and directly into the availability of significant levels of financial resources. Additionally, the expense of innovation represents an opportunity cost to be charged against the resources available for bidding in an auction. This is especially true for small, rural companies such as Panhandle. Therefore, Panhandle submits that review of the pioneer's preference rules is "neither reasonable or necessary."

Even apart from the issue of the effect of competitive bidding, it would be improper as a matter of equity to change the pioneer's preference standards where final action is still pending. As a tentative denial does not represent final action on Panhandle's request, see 47 C.F.R. § 1.106, it would be unfair and unjust to re-evaluate Panhandle's pioneer's preference under standards different from that under which it was initially reviewed. Accordingly, Panhandle submits that the Commission should not retroactively apply any repeal or amendment of the pioneer's preference rules to pending requests.

CONCLUSION

Panhandle opposes any modification of the existing pioneer's preference rules and submits that the public interest will be served by continuing to provide an incentive for small and rural companies to engage in research and development of innovative

services and technologies. Any rule changes that are implemented should not be applied retroactively to the 2 GHz PCS proceedings.

Respectfully submitted,

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November 15, 1993

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, of Kraskin & Associates, 2120 L Street, N.W., Suite 810, Washington, D.C. 20037, hereby certify that on the 15th day of November 1993, I mailed by first class postage prepaid, a copy of the attached Comments of Panhandle Telephone Cooperative, Inc. to the parties listed below:


Nicola A. Chenosky

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